IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTIETH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

-

WRIT PETITION NO : 8592 of 1994

Between:

The Depot Manager, A.P.S.R.T.C.,

Waltair Depot,Visakhapatnam.

..... PETITIONER

AND

1. Industrial Tribunal-cum-Labour Court,

rep. By its Presiding Officer, Visakhapatnam.

2. K.Chinna Rao, D.No.52-10-23,

Rasapuvanipalem, Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ of Certiorari or any other appropriate writ or direction calling for the records relating to the award passed by the 1st respondent in I.D.No.236/90 dated 30.12.1993 and published in G.O.Rt.No.182 dated 19.1.1994 directing to reinstate the 2nd respondent in service with back wages and set aside the same as illegal.

Counsel for the Petitioner: KUM.B.G.UMA DEVI, SC FOR APSRTC

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondent No.2: MR.G.VASANTHA RAIDU

The Court made the following:

ORDER:

This writ petition is filed against the award passed by the first respondent in I.D.No.236 of 1990 dated 30.12.1993 directing reinstatement of the 2nd respondent in service with back wages.

2. The second respondent was working as a Conductor with the petitioner. He was served with a charge memo on 4.11.1988 alleging that on 23.08.1988 at 19.00 hours while he was plying the bus AAZ-405 on route No.48, he caused an accident near Kurupam Market, as a result of which a cyclist died. The second respondent submitted his explanation to the charge sheet, a domestic enquiry was conducted and on the basis of the findings recorded therein, the second respondent was removed from service w.e.f. 24.3.1989. The appeal preferred by the second respondent was rejected by the Divisional Manager in his proceedings dated 18.6.1990. Pursuant thereto the 2nd respondent filed an application under Section 2 A (2) of the Industrial Disputes Act, which culminated in the award being passed in I.D.No.236 of 1990, dated 30.12.1993. The two charges levelled against the second respondent in charge memo dated 04.11.1988 read thus:

"1. The vehicle No.AAZ:405 driven by the workman on route No.48 on 23.8.1988

met with an accident near Kurupam Market at about 19.00 hrs while plying towards depot point from Khailasapuram when it due to his lack of anticipation and careless and negligent driving dashed against the cyclist Sri K. Srinivasarao, 14 years, coming in the opposite direction in consequence of which the ill-fated victim who received multiple injuries succumbed to injuries at K.G. Hospital, Visakhapatnam on 26.8.1988 and therefore, it comes under misconduct under Regulation 28(ix)(a)(b)(xxxi)(xxxii) of A.P.S.R.T.C. Conduct Regulations.

2. The workman failed to report either to the depot or the police station of an accident met near Kurupam Market at about 19hrs on 23.8.1988 by the said vehicle when it dashed against the cycle coming in the opposite direction and that it comes under misconduct under Regulation (28)(xxxii) and (xxxii) of the said Regulations."

The first respondent-Industrial Tribunal-cum-Labour Court, (for short 'the Tribunal'), Visakahaptnam took note of the fact that the doctor, who conducted the post mortem, was not examined to know what kind of injuries were received by the injured, it was not on record as to whether the injuries were caused on being hit by the vehicle or as a result of falling down on the ground and that the observation of the Enquiry Officer that the abrasions on the back of the deceased would not have been there unless he was dragged to a certain distance, was not based on the evidence on record. The Tribunal held that there was no evidence in support of the conclusion of the injuries received by the deceased nor was there any evidence to show that the driver had not taken any precautions or measures to ensure that the cyclist was not hit. The Tribunal held that the allegation of rash and negligent act of the driver at the time of accident was not proved.

With regard to the second charge of not reporting the accident either to the police or the depot authorities, the Tribunal held that though the second charge was proved it was not a serious one requiring imposition of severe punishment. The Tribunal was of the view that the second charge was a misconduct not punishable with dismissal and a lenient punishment could be awarded for the same. While setting aside the dismissal order passed by the Management, the Tribunal imposed punishment of one month suspension without wages and on expiry of suspension the second respondent was deemed to have been in

service. An award was passed directing that the second respondent be reinstated with back wages.

3. Kum. B.G. Umadevi, standing counsel for A.P.S.R.T.C. contends that the second charge of failure to report the accident either to the police station or to the Depot Manager was a misconduct under Regulation 28 (xxxii) of the APSRTC Regulations and that the punishment of removal imposed by the petitioner on the 2nd respondent was justified. She further contends that the Tribunal while exercising its jurisdiction under Section 11(A) of the I.D. Act cannot act only out of sympathy and substitute the punishment imposed by the petitioner for a lesser punishment, except for just and valid reasons.

4. While there is force in the contention of the learned counsel for the petitioner, it cannot also be said that for failure in reporting the accident, the employee is liable to be removed or dismissed from service. It is, no doubt, true that while exercising its jurisdiction under Section 11 A of the I.D. Act and while substituting the punishment imposed by the employer with a lesser punishment, the Tribunal ought to give reasons in support thereof. The punishment substituted by the Tribunal from that by removal from service to one of suspension for a period of one month, is undoubtedly lenient. It is however not for this Court, while exercising its jurisdiction under Article 226 of Constitution of India, to sit in appeal or to substitute the punishment imposed by the Tribunal by another. More over, the award in I.D.236 of 1993 was passed on 30.12.1993, the writ petition itself relates to the year 1994 and more than 11 years have elapsed since then. At this belated stage, I see no justification to interfere with the order of punishment imposed by the Tribunal, after a long lapse of more than eleven years.

5. The writ petition is accordingly dismissed. No order as to costs.

SD/- T. LAKSHMI HEMALATHA

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Presiding Officer, Industrial Tribunal-cum-Labour Court,

Visakhapatnam.

2. Two CCs to the Government Pleader for Labour, High Court of A.P.,

Hyderabad (OUT).

3. Two CD copies

4. One CC to Mr. G.Vasantha raidu, Advocate. (OPUC)

SSL

High Court

Dt.20/06/2005

ORDER

WP.NO.8592 OF 1994

DISMISSED OF NO COSTS.

SSL